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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

RR: 04L-15

DATE OF REFERRAL: October 27, 2004

DATE ACTIVATED: June 16, 2005

EXPIRATION OF SOL: July 10, 2009

SOURCE:

Internally Generated

RESPONDENTS:

Sandy Lyons for Congress and Melissa B. Jordan,
in her official capacity as treasurer
Sanford David "Sandy" Lyons

RELEVANT STATUTES AND
REGULATIONS:

2 U.S.C. § 441a(a)(1)(A)

2 U.S.C. § 441a-1(a)

2 U.S.C. § 441a-1(b)

11 C.F.R. § 400.4

11 C.F.R. § 400.9

11 C.F.R. § 400.21

11 C.F.R. § 400.25

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter concerns reporting requirements, arising under the so-called "millionaires' amendment" of the Bipartisan Campaign Reform Act of 2002 (the "Amendment"), which obligate candidates to comply with special reporting and notification requirements after expending personal funds in excess of specific thresholds and thereafter may allow opposing candidates to exceed normal contribution limits. The Reports Analysis Division ("RAD") has

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1 referred Sandy Lyons for Congress, the authorized committee of 2004 congressional candidate
2 Sanford David "Sandy" Lyons ("Lyons"), and Melissa B. Jordan, in her official capacity as
3 treasurer (the "Committee"), for failing to timely file a statement notifying the Commission that
4 Lyons exceeded the applicable threshold by expending over \$350,000 in personal funds in
5 support of his candidacy.

6 Based on a review of the relevant disclosure reports and available information, this Office
7 recommends that the Commission find reason to believe that the Committee violated the Federal
8 Election Campaign Act of 1971, as amended (the "Act") and regulations regarding the reporting
9 of expenditures from personal funds. Because the Amendment creates specific obligations for
10 candidates, this Office also recommends that the Commission find that Lyons violated the Act.

11 **II. DISCUSSION**

12 **A. FACTS**

13 Lyons was a 2004 primary candidate for North Carolina's Tenth District seat in the
14 United States House of Representatives. Three other candidates ran against Lyons in the
15 Republican primary election, which was held on July 20, 2004. Lyons placed third in the
16 primary and therefore was not a candidate in the subsequent run-off or general election.

17 According to Commission disclosure records, Lyons made a series of contributions to the
18 Committee from his personal funds between January 6 and August 31, 2004, all designated to the
19 primary election. Lyons made an initial expenditure of \$1,000 from his personal funds on
20 January 6, 2004, seven days before he signed his Statement of Candidacy. Lyons made further
21 personal expenditures of \$100,000 and \$109,000, both on March 31, 2004, and one of \$75,000

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1 on June 18, 2004. On June 30, 2004, Lyons made a \$60,000 contribution to the Committee,
2 bringing the amount of personal funds he expended on his campaign to \$345,000. On July 9,
3 2004, Lyons made another contribution to the Committee from his personal funds in the amount
4 of \$100,000, bringing his total expenditures from his personal funds to \$445,000, and exceeding
5 the Amendment's threshold of \$350,000.¹ The Committee reported this personal expenditure on
6 an FEC Form 10, 24-Hour Notice of Expenditure From Candidate's Personal Funds ("FEC Form
7 10"), which was received by the Commission via U.S. Mail on July 14, 2004.²

8 On August 3, 2004, RAD sent a Request for Additional Information ("RFAI") to the
9 Committee regarding the apparent late filing of the FEC Form 10. According to the referral, on
10 August 10, 2004, Melissa Jordan ("Jordan"), the Committee's treasurer, telephoned a RAD
11 analyst and stated the FEC Form 10 was filed late due to an oversight on her part. The RAD
12 analyst requested that Jordan file an electronic memorandum to publicly provide an explanation
13 for the late filing of the FEC Form 10, which Jordan agreed to do. However, no such
14 memorandum has yet been received by the Commission.

¹ There was a discrepancy regarding the date of the expenditure on reports filed with the Commission. The notification filed on July 14, 2004 indicated the expenditure was made on July 8, 2004, while the 2004 October Quarterly Report indicated the date of the expenditure was July 9, 2004. Viewing the inconsistency in the light most favorable to the Committee, the latter of the dates was used in calculating the number of days between the expenditure and the filing of the notification.

² On August 31, 2004, forty-one days after he lost the primary, Lyons made another expenditure of \$4,000 from his personal funds, designated to the primary. Lyons did not have to file another Form 10 because he did not spend an additional \$10,000 over his initial filing. 2 U.S.C. § 441a-1(b)(D). Lyons' total expenditures from personal funds amounted to \$449,000 and were reported on the Committee's 2004 April Quarterly Report, 2004 12 Day Pre-Primary Report, and 2004 October Quarterly Report. On January 4, 2005, the Commission received a Termination Report requesting that Lyons for Congress be permitted to terminate. This request was denied pending possible enforcement action.

1 B. LEGAL ANALYSIS

2 When a candidate for the United States House of Representatives “makes or obligates to
3 make an aggregate amount of expenditures from personal funds in excess of \$350,000 in
4 connection with any election” the candidate or his authorized committee must notify the
5 Commission by filing an FEC Form 10 with the Commission within twenty-four hours after
6 exceeding the threshold. 2 U.S.C. § 441a-1(b)(1)(C); 11 C.F.R. § 400.21(b); *see* 11 C.F.R.
7 §§ 400.4(a) (definition of personal funds).³ The regulations specify that the FEC Form 10 must
8 be *received* by the Commission within twenty-four hours of the threshold being exceeded.
9 11 C.F.R. § 400.21(b). Although the FEC Form 10 is signed by the Committee treasurer, the
10 candidate is responsible for ensuring that it is filed in a timely manner. 11 C.F.R. § 400.25.

11 As expenditures from Lyons’ personal funds exceeded the \$350,000 aggregate threshold
12 on July 9, 2004, the FEC Form 10 was due no later than July 10, 2004, at 11:59 p.m. 11 C.F.R.
13 §§ 100.19(g); 400.9(b). However, the Commission did not receive Lyons’ FEC Form 10 until
14 July 14, 2004, four days after the deadline.

15 Accordingly, this Office recommends that the Commission find reason to believe that
16 Sandy Lyons for Congress, and Melissa B. Jordan, in her official capacity as treasurer, violated
17 2 U.S.C. § 441a-1(b)(1)(C) and 11 C.F.R. § 400.21(2). Since the statute and the regulations
18 place a requirement on the candidate to ensure that appropriate filings are made with respect to

³ A House of Representatives candidate’s committee must also notify each opposing candidate and their respective national committees via facsimile or electronic mail within twenty-four hours of the expenditure exceeding the threshold limit. 11 C.F.R. §§ 400.21(b), 400.24(b). There have been no allegations regarding improper notification to Lyons’ opponents and their national committees.

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his expenditures from personal funds, this Office also recommends that the Commission find reason to believe that Sanford David "Sandy" Lyons violated 2 U.S.C. § 441a-1(b)(1)(C) and 11 C.F.R. § 400.21(2).

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

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IV. RECOMMENDATIONS

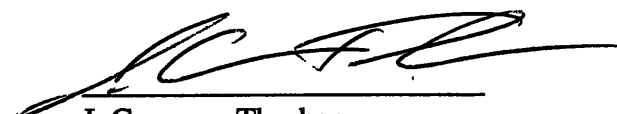
1. Open a MUR.
2. Find reason to believe Sandy Lyons for Congress and Melissa B. Jordan, in her official capacity as treasurer, violated 2 U.S.C. § 441a-1(b)(1)(C) and 11 C.F.R. § 400.21(b).
3. Find reason to believe Sanford David "Sandy" Lyons violated 2 U.S.C. § 441a-1(b)(1)(C).
4. Approve the attached Factual and Legal Analysis.
- 5.
- 6.

7. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

8/2/05
Date

BY: 
Susan L. Lebeaux
Assistant General Counsel


J. Cameron Thurber
Attorney

Attachments:

- 1.
2. Factual and Legal Analysis

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